

REMARKS/ARGUMENTS***The Pending Claims***

Claims 1-4, 6-9, 11-32, and 52-58 are currently pending. Reconsideration of the pending claims is respectfully requested.

The Amendments to the Claims

The pending claims have been amended so as to more particularly point out and distinctly claim the subject matter of the present invention. In particular, claims 1, 28, 29, 52, and 58 have been amended to recite that the composition is stable for at least three months at about 50 °C. This amendment is supported by the specification at, for example, page 6, line 32 through page 7, line 6. No new matter has been added by way of these amendments.

Summary of the Office Action

The Office Action rejects claims 1-4, 6-9, 11-32, and 52-58 under 35 U.S.C. § 103(a) as allegedly obvious over Hollenberg et al. (U.S. Patent No. 5,143,722) in view of Collin et al. (U.S. Patent No. 5,656,672) and Guthauser (U.S. Patent No. 5,162,378). In addition, claims 1-4, 6-9, 11-32, and 52-58 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over Stepniewski et al. (U.S. Patent No. 5,599,533) in view of Rapaport (U.S. Patent No. 5,730,991) and Dorogi et al. (U.S. Patent No. 5,882,661).

Discussion of Rejections**(A) Hollenberg et al., Collin et al., and Guthauser**

Hollenberg et al. allegedly discloses a water-in-oil cosmetic composition containing an oil phase, water phase, a pigment, a sunscreening agent, an emulsifier with an HLB value from 2 to 12 in 0.25-2 wt%, a thickener, an inorganic salt, a silicone elastomer, a glycol, and a preservative. The Examiner concedes that Hollenberg et al. does not disclose the use of a cetyl dimethicone copolyol in 3-6 wt% in the recited water-in-oil emulsion. Collin et al. allegedly discloses a water-in-oil cosmetic composition comprising an oil phase, a water phase, an emulsifier such as cetyl dimethicone copolyol in 0.5-10 wt%, and inorganic salts. Guthauser discloses a water-in-oil emulsion comprising 8-20 wt% cetyl dimethicone copolyol with an HLB value from 4 to 6, water, silicone elastomer, inorganic salts, and PEG. According to the Examiner, it would have been obvious, based on the disclosures of Guthauser and Collin et al., to use cetyl dimethicone copolyol emulsifier in 3-6 wt% in the water-in-oil compositions of Hollenberg et al. in order to arrive at the present invention.

The combination of Hollenberg et al., Collin et al., and Guthauser does not render the present inventive composition obvious. According to the Examiner, Hollenberg et al. describes using an emulsifier with an HLB value of 2-12 (see col. 6, line13). However, Hollenberg et al. states that this particular type of emulsifier is a *silicone-free* surfactant. Thus the emulsifier cannot comprise cetyl dimethicone copolyol, which contains silicone. The composition of Hollenberg et al. can comprise a polydiorganosiloxane-polyoxyalkylene copolymer surfactant with an HLB value of about 2.5 to about 6 (see col. 4, line 20- col.6, line 4). However, this surfactant is limited to those with alkyl substituents of six or fewer carbon atoms (see col. 4, lines 38-49). As such, this surfactant cannot comprise cetyl dimethicone copolyol, which contains C₁₆ alkyl groups. Thus, Hollenberg et al. teaches away from adding an emulsifier that either (a) contains silicone or (b) contains alkyl substituents with *more* than 6 carbons. Cetyl dimethicone copolyol contains silicone *and* alkyl substituents with more than 6 carbons. Therefore, in view of this teaching away, one would not be motivated to modify the composition of Hollenberg et al. and add a cetyl dimethicone copolyol, regardless of the disclosures of Collin et al. and Guthauser.

With no motivation for one of ordinary skill in the art to combine the disclosures of Hollenberg et al., Collin et al., and Guthauser, claims 1-4, 6-9, 11-32, and 52-58 are unobvious. Accordingly, the obviousness rejection should be withdrawn.

(B) *Stepniewski et al., Rapaport, and Dorogi et al.*

Stepniewski et al. allegedly discloses cosmetic compositions comprising water-in-oil emulsions comprising an oil phase, a water phase, a pigment, a sunscreening agent including a preservative, an emulsifier or surfactants with an HLB value of 2-6 in 0.1-20 wt% or cetyl dimethicone copolyol in 0.5 wt%, a thickener, a separation inhibitor, a silicone elastomer, and an inorganic salt. The Examiner concedes that Stepniewski et al. does not expressly disclose the use of a cetyl dimethicone copolyol in about 3-6 wt%. Rapaport discloses a skin peel composition that can include octyl methoxycinnamate as a sunscreen agent. Dorogi et al. discloses a composition for treating or conditioning human skin, hair, or nails. The composition can include phenoxyethanol, propyl paraben, and methyl paraben as preservatives. According to the Examiner, it would have been obvious to combine the elements disclosed by Rapaport and Dorogi et al. with the compositions taught by Stepniewski et al. in order to arrive at the instant invention. The Examiner contends that since Stepniewski et al. describes using a surfactant in 0.01-20 wt% (preferably 1-4 wt%) and also describes using a cetyl dimethicone copolyol, it would have been obvious to optimize this parameter to arrive at the limitation of 3-6 wt%.

The combination of Stepniewski et al., Rapaport, and Dorogi et al. does not render the present inventive compositions obvious. Rapaport and Dorogi et al. do not even mention the use of a cetyl dimethicone copolyol in any amount, let alone in the amount of about 3-6 wt%. Stepniewski et al. broadly describes the use of a surfactant in the range of about 0.01-20 wt%.

Applicant has discovered that adding about 3-6 wt% of an emulsifier comprising a cetyl dimethicone copolyol to the water-in-oil emulsion is critical to the present invention. As seen in the accompanying Rule 132 Declaration, compositions of the present invention were prepared with about 3 wt% cetyl dimethicone copolyol and about 6 wt% cetyl dimethicone copolyol. As with the formulation set forth in Example 1, which comprises about 4 wt% cetyl dimethicone copolyol, the samples with about 3 wt% and about 6 wt% cetyl dimethicone copolyol are stable for at least three months at 50 °C.

In contrast, Comparative Samples A and B (described in the Rule 132 Declaration submitted previously) comprising about 1 wt% and about 8 wt% cetyl dimethicone copolyol were not similarly stable. The composition containing about 8 wt% cetyl dimethicone copolyol did not provide an emulsion that was stable for at least three months at 50 °C. For example, Comparative Sample B with about 8% cetyl dimethicone copolyol separated into individual layers within a matter of days. Similarly, Comparative Sample A, which contained about 1 wt% cetyl dimethicone copolyol, provided an emulsion that was initially stable but fell apart after about one and a half months.

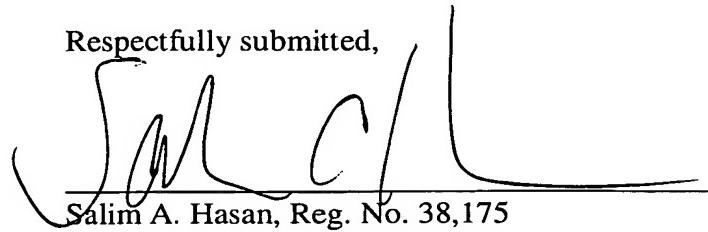
Thus, even though Stepniewski et al. describes using a surfactant in the range of about 0.01-20 wt%, Applicant has shown that values *outside* of the claimed range (i.e., about 1 wt% and about 8 wt% cetyl dimethicone copolyol) but falling *within* the broad range of 0.1-20 wt%, do not provide a stable emulsion. Therefore, it cannot be said that Stepniewski et al. renders the present invention obvious, since Stepniewski et al. clearly does not appreciate any benefit in providing a composition comprising about 3-6 wt% of a cetyl dimethicone copolyol. It is only with the impermissible use of hindsight that one might allege that Stepniewski et al. teaches a composition of the present invention.

In view of these surprising and unexpected results, and without the motivation to include about 3-6 wt% of a cetyl dimethicone copolyol as an emulsifier to a water-in-oil emulsion based on the disclosures of Stepniewski et al., Rapaport, and Dorogi et al., claims 1-4, 6-9, 11-32, and 52-58 are unobvious. Accordingly, the obviousness rejection in view thereof should be withdrawn.

Conclusion

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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